

REMARKS

In the Office Action dated December 5, 2002, the Examiner rejected pending claims 1-7 and 9-13 under 35 U.S.C. 102(b) as being anticipated by Whiteside U.S. Patent No. 1,638,134.

Applicants herein amend the specification and replace claims 1-7 and 9-13 with claims 1- 22.

The specification was amended to more clearly explain the invention and to correspond to the terminology used in the newly submitted claims. No new matter has been added, and the changes made are supportable by the pre-existing specification, drawings and claims. In such regards, for example, in the previous specification, the term "scoop" was used in more than one context, and that same term was found in a different context in the Whiteside reference. In the amended specification, the term "assembly" has been employed to refer to the entire device. The term "removal portion" refers to the portion of the assembly that includes a lateral projection having a longitudinal channel formed between a leading and trailing edge. The term "collection compartment" or "compartment" refers to the section of the assembly that receives the frozen food product after it has been cut away and scraped from the surface and rolls back on itself through the channel. The food product leaves the channel and moves through the collection compartment to the collection component which is part of the forming and dispensing portion.

The trailing edge of the removal portion cuts a ribbon or thickness of food product from the surface of the open container. The concave portion of the channel adjacent the trailing edge curls the ribbon of food product and starts the process by which the ribbon rolls back around on itself as it moves through the channel as more product is cut away from the surface. The food product reaches the large end of the channel in a generally hollow spherical shape. At the end of the channel, the food product exits the removal portion and enters the collection compartment.

At the other side of the collection compartment, the food product empties into the collection component. As a result of the ribbon of food product rolling back on itself as it moves through the length of the channel, the food product deposits into the collection component in the familiar shape of a scoop of ice cream. The dispensing portion then delivers the food product to the suitable holder.

New claims have been submitted to eliminate much of the "means" language that appeared in the prior claims, and to more clearly identify the invention.

Applicants submit that the present invention is substantially different from the Whiteside reference both structurally and functionally. The present invention is directed to an assembly that includes a channel defined by a leading and trailing edge. The food product is cut by the trailing edge and is scraped in a layer or strip into the channel. Once it enters the channel, the food product starts rolling back on itself following the shape of the channel. As the assembly or container rotates, the rolled food product is coiled until it resembles a somewhat hollow sphere. That sphere increases in size as the channel widens. When the food product sphere moves through the collection compartment at the end of the removal portion and empties into the collection component, it is essentially the desired size, shape and consistency of a standard scoop of ice cream. The dispensing portion, when engaged cuts through the strip of food product so it can be placed into a suitable holder.

The Whiteside patent discloses a two piece system. The first piece is a head or closure for the ice cream container. At column 2, lines 100 - 109, the patent describes this head with a recess from its centre to the periphery at one side, with an inclined wall 19, and extending spirally from the centre with a lip 20 parallel with and projecting beyond the bottom surface of the head with a connecting edge sufficiently sharp to imbed into the surface of the ice cream and

deflect the ice cream upwards into the cavity 19, when the handling device C is rotated. At column 3, lines 5 - 13, the patent explains that adjacent the lip 20 a slot 19" permits the upward passage of the film or shaving of ice cream into the space formed by the wall 19, and the slope of this wall directs the ice cream so ejected by the lip to flow or crowd toward the centre of the handling device C and emerge from the head 18 or toward the hollow centre or core of the shank 17.

Applicants' invention forms a channel with a leading and a trailing edge designed to facilitate the rolling of the food product within the channel as to form a sphere. The Whiteside device defines a cavity by a recessed wall in the lid and extends a lip below the bottom of the lid. If the Whiteside device were to identify a leading edge to its cavity, the leading edge would be flush with the lid and in contact with the food product because the cavity is indented within the lid of the container. The food product is forced into the cavity and crowded towards the center when the scoop is rotated. Even if the food product could roll back on itself, it can only move to the center at the base of the tubular shank. Once the cavity is full, the pressure of the food product subsequently scraped, pushes the food product up into the tubular shank. Applicants' assembly uses a retrieval arm wherein the leading edge of the channel does not touch the surface of the food product. When Applicants' trailing edge cuts a layer of food product, it follows the shape of the channel away from the surface and rolls back on itself as it follows the channel. The Whiteside device scrapes the food product together and pushes it out of the container under pressure. Applicants' assembly scrapes the food product into a channel and guides it out of the container following the curvature of the channel formed between a leading edge and a trailing edge.

This distinction is important because the Whiteside device negatively impacts the quality of the ice cream by changing the physical property of the product specifically by reducing what the industry calls overrun, which is incorporated air when the ice cream is compressed in the cavity. Applicants' invention maintains the quality of the ice cream because it is moved along the channel and emerges from the container without undergoing compression. Applicants' invention minimizes overrun reduction which is desirable from both a quality and economic basis.

The second piece of the Whiteside device is a dipper with a handle and a scoop at its lower end. At column 3, lines 21 - 25, the Whiteside patent describes the dipper as formed to engage the sloping surface 19' of the interior of the head or closure 18, but terminates adjacent the centre or axis so as not to interfere with the flow of ice cream to the interior of the dipper. The dipper of the Whiteside device is placed inside the opening at the end of the cavity, and then cuts through the mass of ice cream that was crowded through the cavity by the rotation of the lip. Applicants' invention places the dispensing portion including the collection component outside the compartment at the end of the removal portion. The ice cream is brought out of the container to the collection component in the Applicants' device. The Whiteside device places the dipper inside the cavity and pulls the ice cream out of the container. In contrast, Applicants' assembly draws the food product out of the container to the collection component.

The claims have been replaced to more clearly describe the invention and no new matter has been added to the application and drawings as filed. Claim 1 is an independent claim directed to an assembly for dispensing frozen food product from a container. Claims 2 - 16 depend from claim 1. Claim 17 is an independent claim. Claims 18 - 22 depend from claim 17.

Applicants believe that all the claims of this application contain limitations which patentably distinguish them over the cited prior art and their allowance is hereby respectfully requested.

Applicants of the above-noted application herewith request a one (2) month extension of time from March 6, 2003, to May 5, 2003, in order to permit a response to be filed during the fifth month to the Office Action dated December 5, 2002. Submitted herewith is our check in the amount of \$205.00 to cover the cost of the extension of time.

Authorization is hereby provided to charge any underpayment of fees or any additional fees due with respect hereto to our Deposit Account No. 08-1280.

If the Examiner has any comments or suggestions for placing the present claims in better condition for allowance, Applicants' undersigned attorney would appreciate a telephone call at the number indicated below.

Respectfully submitted,

HAVERSTOCK, GARRETT & ROBERTS LLP



Mary T. Edwards
Registration No. 41,729
Attorney for Applicants
611 Olive Street, Suite 1610
Saint Louis, Missouri 63101
(314) 241-4427
(314) 241-3317 (fax)

May 5, 2003
3237am2.sam